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### **APPEAL TO EMOTIONS AS A WAY OF INFLUENCING IN COURT (LINGUISTIC ASPECT)**

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*Appealing to emotions from the point of its discursive influence on recipients is researched in the paper. The relevance of the article is due to the dearth of research and lack in-depth analysis done on the subject in the context of importance of influencing in court.*

*In this article, the author in detail sets out the differences between such notions as emotions and feelings. The views of leading scientists dealing with the phenomena are carefully analysed. Considerable attention is given to the applied nature of the research.*

*The primary purpose of this piece of research is to investigate appeal to emotions in Anglophone court discourse from the point of its influence on litigants. The following objectives have been set: to clarify the terminological apparatus involved in the article; to find out the way of influencing emotions on litigants; to establish the language means expressing stratagemes of appeal to emotions in Anglophone court discourse.*

*Mention should be made of the following methods that were used here to achieve the aim: linguistic observation and analysis, as well as cognitive method, critical discourse analysis method, pragmatic analysis method.*

*It has been proven that the advocate can generate a new emotional perception of the circumstances of the lawsuit, focusing the decision-maker's attention on certain points of the known information or throwing in a new piece of information, which in turn can change the mind of the judge and the jury. With this point in mind, the prosecution also appeals to emotion, albeit as an ability that awakens ethical/moral intelligence. In terms of linguistic representation, the appeal to emotion is realised through the discursive activation of the thematic sphere «emotional state». It has been established that the ultimate goal of an advocate is to provoke a certain emotional response that causes the recipient to have certain feelings. Specific thematic groups with a common seme "intuitive perception", "sensory perception", which realise the appeal to feelings have been identified.*

**Keywords:** *appeal to emotion, appeal to feeling, Anglophone court discourse, emotional impact, thematic group, provocation of emotional response.*

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## АПЕЛЯЦІЯ ДО ЕМОЦІЙ ЯК СПОСІБ ВПЛИВУ В СУДІ (ЛІНГВІСТИЧНИЙ АСПЕКТ)

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У статті розглянуто проблему апелювання до емоцій в англійськомовному судовому дискурсі з позиції їхнього впливу на реципієнтів. Актуальність статті зумовлена малою кількістю досліджень і відсутністю глибокого аналізу емоцій з огляду на важливість їхнього впливу в судовому контексті.

У статті визначено відмінності між емоціями й почуттями. Критично проаналізовано думки відомих учених, які досліджують зазначені поняття. Значну увагу приділено прикладному характеру дослідження.

Основною метою цієї розвідки є вивчення апелювання до емоцій в англійськомовному судовому дискурсі з позиції його впливу на учасників судового процесу. Поставлено такі завдання: уточнити термінологічний апарат, задіяний у статті; з'ясувати спосіб впливу емоцій на учасників судового процесу; установити мовні засоби, що виражають стратегії апелювання до емоцій в англійськомовному судовому дискурсі.

Використано такі методи для досягнення зазначеної мети: лінгвістичне спостереження та аналіз, когнітивний метод, метод критичного аналізу дискурсу, метод прагматичного аналізу.

Доведено, що за допомогою емоцій адвокат може сформувати нове, емоційне сприйняття обставин судової справи, фокусуючи увагу особи, яка приймає рішення, на певних моментах відомої інформації або надає нову інформацію для переконання судді та присяжних. Сторона звинувачення теж апелує до емоцій, але як до здатності, до етичної/моральної кмітливості. З позиції лінгвістичної репрезентації апелювання до емоцій реалізується через дискурсивну активізацію тематичної сфери «емоційний стан». Установлено, що кінцевою метою адвоката є така провокація емоційної реакції, яка зумовлює виникнення певних почуттів у реципієнта. Виокремлено тематичні групи із загальною семою «інтуїтивне сприйняття», «чуттєве сприйняття», які реалізують апеляцію до почуттів.

**Ключові слова:** апеляція до емоцій, апеляція до почуттів, англійськомовний судовий дискурс, емоційний вплив, тематична група, провокація емоційної реакції.

**Problem statement.** The appeal to emotion becomes an inherent component of persuasive tactics in court. It should be stressed that at the level of brain structure and functioning, as the evidence from contemporary neuropsychological research shows, a clear topological distinction between thinking and emotion is not possible: «...evidence from neuropsychological studies suggests that at the level of brain structure and functioning, a clear-cut topological distinction between cognition and emotion might not be feasible» [1]. Moreover, though being often opposed, they successfully interact and complement one another. Just as the thinking process cannot exist without emotions, emotions cannot exist without accompanying thoughts: emotions intervene in our thinking and change it, redirecting or

creating new thoughts; the thinking process can also evoke or suppress certain emotions in the process. However, because emotional reactions outstrip the cognitive evaluation of information, litigants primarily seek to affect the emotions and feelings of the judge and jurors. However, the ways of influencing the emotions and feelings of the jurors are different from, for instance, the ways of influencing in political discourse. The arguer appeals, if one may say so, to the higher, meaning-bearing emotions, the emotional intelligence.

Based on such an understanding, we have assumed that litigants are more influenced by emotion as the ability of the recipient/enforcer, who has emotional intelligence, to reconsider their own prejudices in terms of their acceptability in the context of a

particular case. In other words, an appeal to such emotions is called an appeal to phronesis.

Hence, the object of the study is Anglophone court discourse; and the subject of the study is the linguistic manifestation of appeal to emotion and feelings in Anglophone court discourse.

Thus, **the aim** of this study is to investigate appeal to emotions in Anglophone court discourse from the point of its influence on litigants.

In order to achieve this goal, the following **objectives** are to be solved:

1) to clarify the terminological apparatus involved in the article;

2) to find out the way of influencing emotions on litigants;

3) to establish the language means expressing stratagems of appeal to emotions in Anglophone court discourse.

The aim, objectives and specificity of the material determined the choice of **methods** of analysis.

At the stage of terminological reasoning the following methods were applied: comparison (comparing the views of different scholars, directions of problem analysis, etc.), classification (identifying linguistic means), generalisation (summarising information), argumentation (in support of its position).

In our choice of approaches to the analysis we were guided by the contemporary scientific paradigms: cognitive linguistics, pragmatic linguistics, speech communication theory, lexico-semantic analysis methods. Elements of cognitive analysis helped to identify the dependence of judicial discourse on social conditions.

**Previous research.** Professional communication is always aimed at achieving a certain result, at solving a problem, i.e. it is goal-oriented communication. In addition, professional communication implies a high level of responsibility for not accomplishing professionally relevant goals. The representative of the prosecution speaks for the state and

must be ceremonially impartial. This rule is more lenient in the case of a lawyer. The client's interests become the priority, which inevitably leads to changes in the discursive behaviour of lawyers. The trial lawyer seeks to seize the initiative in the trial process and accordingly resorts to a strategy of denial and attack when trying to refute the position of the prosecutor. In the case of a lawyer, this rule is relaxed. Recently, it has even been proposed to amend the Code of Conduct for Advocates, Article 43 of the Rules on Advocates' Ethics: «To respect the principle of independence and priority of the client's interests when fulfilling his/her duties as an advocate and a representative, a lawyer must be compassionate and committed to upholding the interests of the client in the proceedings and in court, not to compromise his interests in the interests of maintaining good relations with the investigating authorities, prosecutors and judges...» [2: 426].

Everyone knows the axiom about the impartiality of judges at trial. The myth of impartiality «is based on two fictions: 1) emotion necessarily leads to injustice and 2) a just decision maker is necessarily impartial» [3]. However, no one today would deny the need for emotional intelligence, and the higher it is, the better the capacity for understanding is displayed. Well-developed emotional intelligence enables one to resist manipulation, achieve emotional leadership, create effective communication, and persuade communicators to be right.

One component of emotional intelligence is empathy, which is a prerequisite for emotional experience and the cultivation of practical wisdom, according to J. Tontti, that promotes constant self-criticism on the part of the enforcer so that the decisions he makes can claim to be fair [4].

Thus, if we take the classification of emotions in law proposed by P. Mindus as a basic one: «1) emotions as feelings; 2) emotions as bias; 3) emotions as

preferences; 4) emotions as capacity» [5: 31], then we can argue that litigants try to influence by emotions as capacity, that is, emotions that become triggers for the enforcer to revise their own biases in terms of their acceptability in the context of a specific case (phronesis).

In other words, the arguer appeals, if I may say so, to the higher, meaning-bearing emotions, the emotional intelligence. Higher emotions are associated with personal, socially significant values [6]. The ability to experience such emotions is directly related to emotional intelligence. P. Salovey and J. Mayer in 1990 defined emotional intelligence as «the ability to monitor one's own and other's feelings and emotions, to discriminate among them, and to use this information to guide one's thinking and action» [7: 189].

Emotional intelligence or the emotional factor, in Reuven Bar-On's terminology, includes: (1) the ability to be aware of, to understand, and to express oneself; (2) the ability to be aware of, to understand, and to relate to others; (3) the ability to deal with strong emotions and control one's impulses; and (4) the ability to adapt to change and to solve problems of a personal or a social nature» [8]. Obviously, the higher the level of emotional intelligence, the greater the ability of the speaker to evoke and control the necessary emotions; and the greater the ability of the recipient, at whom the speech is aimed, to manage their emotions, to recognize the emotional impact of the arguer.

These types of emotions alter the recipient's attention span, shifting the informational focus and creating the basis for a certain degree of certainty [9]. The representative of the prosecution, evoking such emotions, thereby creates an expanded scope of attention, draws the attention of recipients to concrete rather than abstract images, and triggers a «high level of interpretation trigger» [10]. Let

us analyse the ways of explicating the appeal to emotion in court discourse from the point of view of the theoretical positions outlined.

**Results and discussion.** As an example, let us look at several trials.

The first-degree theft case from 1904 is very illustrative in this respect. Here are the following quotations:

«...and If it were not that a I want you gentlemen **to have the whole truth about this matter**, and to have an opportunity of **letting this defendant tell you just what did happen**, I would be perfectly willing **to rest my case right here** because **the prosecution has put evidence** here, by one of its own witnesses, the **absolute undeniable proof** that this whole thing is a scheme and conspiracy of Fyshe to cover up his own wrongdoings with that diamond necklace...»; «he knew a **lady**», «At the same time , if the worst comes to the worst, he can make a **charge against this poor woman**» [11].

In his speech, the lawyer builds a logic chain: to find out the truth (**tell you just what did happen, to have the whole truth about this matter**) – the poor woman (**this poor woman**).

He evokes emotions of indignation in the judge and the jury, stressing that they have not been given the whole truth, especially since the defendant is a poor woman whose honour (and she is accused of theft) the jury must stand up for. The highlighted lexical units become an «emotional anchor», the purpose of which is to trigger a clearly defined emotional reaction. On the one hand, a person will always be offended if the truth is withheld from him, which is totally unacceptable in court (the emotion of indignation); on the other, any gentleman is obliged to stand up for the honour and dignity of a lady who is accused, most probably illegally (the emotion of anger): *a charge against this poor woman*.

The lawyer himself, the jury, the judge appear as noble knights defending the lady from the plaintiff,

who wants to cover up his crimes with this alleged theft: *to cover up his own wrongdoings with that diamond necklace.*

Once an anchor has been «set», it is necessary to maintain it, i.e. to reinforce it with repetition, because without this a single anchor may not be fixed in memory, without affecting the recipient's consciousness as a result. Repetition has another function: «habitual» lexemes become constructs (a construct is a speculative construction) of discourse: a poor woman of noble origin, unjustly accused, to be defended.

Between 2005 and 2007 there were trials against Brendan R. Dassey and his uncle Stephen Avery [12], convicted because of the murder of photographer Teresa Halbach on 31 October 2005.

The lawyer in his speech in Brendan Dassey's trial provokes an emotion of shame about the actions of the police, resulting in a sense of guilt for those involved in the trial. Firstly, the lawyer emphasizes the fact that the defendant is in school:

«On October 31 of 2005, Brendan Dassey came home about 3:45 from **school**, from **high school**, with his brother, Blaine» [12].

In doing so, he stresses the modest mental capacity of the defendant, who is a schoolboy (repetition):

«It's about a **16-year-old boy** at the time. It's about a **16-year-old high school student** with **below average cognitive abilities...**» [12].

The lawyer focuses the recipients' attention on the two police officers - adults, intelligent, trained - who conducted the interrogation:

«You'll learn that this **shy, socially inept, suggestible individual** will meet **two highly trained, intelligent, adult police officers**. DCI Agent Tom Fassbender and Investigator Mark Wiegert. They're **trained as adult law enforcement officers, trained to obtain confessions, and trained on Brendan Dassey**» [12].

He further draws the jury's attention to the interrogation methods of these police officers:

«Oftentimes, you'll hear the **investigators asking Brendan to simply change what he said**. They ask him to **change what he said to meet their theme, to meet the story that they want to present**; «**Watch how he answers the questions. Watch how the questions are asked. At times it differs. Times they cozy up to Brendan to get the answer they want. At times they pull back from Brendan when he's not giving them the answer they want and they expect. It's like the new puppy dog. When he does what he's supposed to do he gets a pat on the head and a treat. Good job, Brendan. Good job. Good boy. But when it's not what they want, we're leaving Brendan, until you tell us what we want to hear**» [12].

Repetition and reinforcement of the emotion of shame transforms it into a feeling of guilt, on the one hand. On the other hand, the recipients relate the situation to their own personal experience, to the experience of others when someone has, quite possibly, experienced police misconduct, i.e. a process of «reliving» the emotion that is triggered. The outcome of which may be an exaggeration or generalization of the case to their own life experience.

The lawyer in the second trial of principal defendant Stephen Avery also appeals to the emotions and feelings of those involved. He recalls the case of the rape and attempted murder of a girl in which the defendant was wrongly accused twenty-two years ago, and was released after eighteen years in prison because of newly presented evidence in the case:

«This **summer it will be 22 years, 22 years since a woman running on the beach in Manitowoc was raped and beaten nearly to death**. The Manitowoc County Sheriff's Department investigated those awful crimes **and they charged Steven Avery with rape**

**and attempted murder on that Manitowoc beach, 22 summers ago. He said consistently that he was innocent, that he had not done it. No one believed him, no one but his own family believed him»** [12].

He states the name of the real culprit, who confessed to the crime twenty years ago. He may also be responsible for this murder:

*«Somewhere else, somewhere we don't know, a man named Gregory Allen, presumably, was laughing and planning his next violent rape»* [12].

The feeling of anger, of annoyance, which any law-abiding person would feel, is obviously legitimately expected in this case. In trying to persuade the jury, the advocate reinforces rational evidence with irrational evidence in the hope that the jurors will also be guided by faith, intuition, emotions and feelings when judging the case.

In the high-profile trial of the murder of the girl of famous Paralympian Oscar Pistorius [13], the lawyer also appeals to the emotions of the judge and the jurors through a suggestive presentation of the personality of the accused as experiencing physical suffering:

*«Pistorius told his doctor he falls frequently, at least once a week or two weeks; He sometimes falls down when getting out of bed; He will sometimes go to the bathroom without prostheses, but would not go into the rest of the house without them; He gets back pain from using his artificial legs and cannot stand for more than an hour without finding them constricting; He is easily pushed over from front or back; Versfeld says the soft tissue around Pistorius' stumps is "very, very mobile" – the heel pad slips backwards when he puts weight on it, causing pain and instability; He is testifying to the vulnerability of Pistorius when he's without his prostheses»* [13].

On the other hand, he describes the moral distress of the murdered woman and her family:

*«He began with a tearful, broken-voiced apology to the family and friends of Steenkamp, saying there is "not a moment" when he does not think about her family, and prays for them daily. He added: "I've tried to put my words on paper many times to write to you but no words would ever suffice"»* [13].

The suggestive way of presenting the personality of the defendant as a physically defective person (he has amputated feet due to the absence of fibulae in both legs) arouses the emotion of compassion in the recipients; as a penitent – the emotion of satisfaction from the recipients, as he has fully realised his deed. The advocate reinforces the evoked emotions with repetition, establishing a chain of constructs: a young paralympic man on prostheses, accused of a crime committed unintentionally, who sincerely repents of it.

Differentiating between the emotions appealed to by the prosecution and those appealed to by the defence, we conclude that the prosecution representative is more influenced by emotions as capacity. That is, emotions that contribute to effective situational thinking that helps to make good decisions and assessments, and less so, by emotions as feelings, which can distract recipients from the main eventuality. Neuropsychologists call this «cold cognition». The representative of the defense appeals primarily to emotions as feelings in order to distract the recipients from the main script of the event, achieving greater emotional involvement on the part of the recipients. Thus, emotion becomes a specific form of cognition that serves to reflect and evaluate the reality around a person.

The triggered, repeated and lived emotion/feeling becomes a thought and, formulated as a judgement, determines the recipient's behaviour. Let us present this as the following scheme: Information – Interpretation –

Behaviour. From our point of view, interpretation is expressed in the form of judgements: a) based on real facts (rational thinking) and b) based on emotions and feelings (irrational thinking). Emotions appealed to by the prosecution (emotion as capacity, ethical competence) promote rational thinking. At the same time, however, emotions appealed to by the lawyer promote irrational thinking. Irrational thinking permits judgements that are unacceptable and inexplicable in terms of facts, but their existence is justified by faith, intuition, emotions, and feelings. It unites the objective and the subjective as a link between the theoretical and the everyday, «modes of human existence superimposed on each other» [10: 116]. The result of irrational thinking is often exaggeration, overgeneralisation, and parallel comparisons.

**Conclusions.** The analysis has revealed that emotion-driven perceptions, among others, become one of the factors influencing the decision-making process. Thus, the appeal to emotion acts as an important discursive practice for the discursive personality of the lawyer: by introducing an event first and foremost as an emotional one, the advocate can generate a new emotional perception of the circumstances of the lawsuit, focusing the decision-maker's attention on certain points of the known information or throwing in a new piece of information, which in turn can change the mind of the judge and the jury. Probably with this point in mind, the prosecution also appeals to emotion, albeit as an ability that awakens ethical/moral intelligence. In terms of linguistic representation, the appeal to emotion is realised through the discursive activation of the thematic sphere «emotional state».

Provoking an emotional response causes certain feelings to arise in the recipient, which is the purpose of the advocate. Whereas emotions are situational, that is, they can level out,

and reflect the subject's attitude towards the object now, feelings, unlike emotions, have relative stability and permanence because they are mediated by consciousness, are linked to certain knowledge, and involve memory, thought processes and the will. In order for emotions to develop into feelings, they not only need to be repeated but also «experienced». In terms of linguistic representation, the stratagem of appeal to the irrational is realised through the discursive activation of the following thematic spheres: with the common theme of «intuitive perception», «sense perception».

As a result of the content analysis of court pleadings, we can claim that in the absence of substantial evidence, the lawyer is more likely to use appeals to emotions and feelings. The piece of research is of both theoretical and practical value. Its **theoretical value** is in presenting, for the first time, a comparative overview of the speech behaviour of discursive personalities such as the prosecutor and the lawyer from the point of appealing to emotion and feelings.

The **practical value** of the paper is in providing the possibility of using its provisions and conclusions, the factual material in the study of communicative science, psycholinguistics, discourse analysis, in the practice of translation, linguistics and area studies, in the course of legal writing, oratory.

Being limited by the scope of the article, we have not been able to fully cover all the issues of interest relating to appeals to emotion in court. Therefore, we note that the research is **promising** in terms of considering such points as the use of appeals to emotions by other litigants, e.g. the defendant, witnesses, experts.

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